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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
ASAP Paging, Inc.)	
)	WC Docket No. 04-6
Petition for Preemption of)	
Public Utility Commission of)	
Texas Concerning Retail Rating)	
Of Local Calls to CMRS Carriers)	

COMMENTS OF VERIZON WIRELESS

Verizon Wireless respectfully submits comments on the Petition of ASAP Paging, Inc. (“Petition”) in the referenced docket. To the extent that the Petition relates to commercial mobile radio service (“CMRS”), the Commission should grant ASAP’s Petition and preempt a state PUC order that violates Commission orders and local dialing parity requirements. The Commission should rule that local exchange carriers (“LECs”) must treat calls to CMRS numbers rated in extended local dialing areas as local and not toll, and that CMRS providers can interconnect indirectly and maintain different rating and routing points. Verizon Wireless takes no position on ASAP’s service to Internet service providers, or whether its service to these customers may result in a different outcome on ASAP’s Petition.

BACKGROUND AND SUMMARY

ASAP Paging, Inc. (“ASAP”) filed the Petition seeking preemption of an October 9, 2003 Texas Public Utility Commission (“TPUC”) order¹ permitting CenturyTel of San

¹ Complaint, Request for Expedited Ruling, Request for Interim Ruling, and Request for Emergency Action of ASAP Paging, Inc. Against CenturyTel of San Marcos,

Marcos, Inc. (“CenturyTel”) to require its end users in the San Marcos rate center to dial “1+” and pay retail toll charges when they call ASAP customers with numbers rated in the Kyle, Fentress, and Lockhart exchanges even though all of these exchanges are part of a mandatory Extended Local Calling Service (“ELCS”) plan. According to the Petition, ASAP is a paging company that also offers inbound calling to Internet Service Providers (“ISPs”).² ASAP has established a point of interconnection (“POI”) at Southwestern Bell Telephone Company’s (“SWBT”) Greenwood tandem office in Austin and does not connect directly to the San Marcos, Kyle, Fentress, or Lockhart exchanges. ASAP’s switch is also located in Austin.

Under the ELCS, CenturyTel end users in the San Marcos rate center can call SWBT end users in the Lockhart exchange and Verizon Southwest (“Verizon”) customers in the Kyle and Fentress exchanges without dialing “1+” and incurring toll charges. CenturyTel, SWBT, and Verizon provide ELCS service between San Marcos, Kyle, Fentress, and Lockhart using direct trunks between end offices in these exchanges. SWBT and Verizon are both honoring ASAP’s rate center assignments, including those within the ELCS areas.³

The TPUC’s rationale for this decision was that the geographic location of the calling customer and called customer should determine whether a call is rated toll or

Inc., *Order*, Public Utility Commission of Texas, PUC Docket No. 25673 (Oct. 9, 2003) (“*TPUC Order*”).

² Verizon Wireless takes no position on the specific service that ASAP is offering to its customers but comments with respect to the rules that apply to CMRS carriers offering CMRS.

³ Petition at 40 n.80.

ELCS, and that because ASAP's customers are "located" in Austin, CenturyTel's customers may not call ASAP's customers on a local basis.⁴

The main issue in the Petition is whether wireline carriers such as CenturyTel can require 1+ dialing to CMRS numbers that are rated in exchanges that are local for landline calls, particularly when, as in this case, the CMRS provider has opted not to interconnect directly to those exchanges. Verizon Wireless urges the FCC to grant ASAP's Petition and clarify that: (1) LECs cannot require their landline customers to dial extra digits or incur toll or long distance charges when they call mobile numbers rated in otherwise local exchanges; (2) the rate center assignment of the calling and called parties, and not the geographic location of the mobile customer or the mobile switch, determines the rating of land-to-mobile calls; and (3) CMRS providers are not required to establish direct connections to establish local calling and may designate different rating and routing points.

I. LECS MUST COMPLY WITH DIALING PARITY OBLIGATIONS

47 U.S.C. § 251(b)(3) requires LECs to provide dialing parity. Under the Act,⁵ the term "dialing parity" means "that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including

⁴ *TPUC Order* at 7 (ASAP's ISP customer is in Austin and CenturyTel's customers call ASAP's paging service at ASAP's mobile telephone switching office located in Austin).

⁵ *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §§ 151 *et. seq.*) ("Act").

such local exchange carrier)."⁶ When it implemented these provisions, the FCC required LECs to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of the calling or the called party's local telephone service provider.⁷ The FCC also specifically required LECs to provide dialing parity to CMRS providers,⁸ reasoning that this requirement was necessary to promote competition in the local marketplace.⁹

The TPUC's decision to permit CenturyTel to require its customers to dial "1+" to reach CMRS customers using numbers from a rate center that is considered local when CenturyTel's customers call a landline end user in the Kyle, Lockhart, and Fentress exchanges is both unlawful and bad public policy. As an initial matter, the *TPUC Order* is entirely inconsistent with CenturyTel's dialing parity obligation, which the FCC has made clear prohibits "the dialing of extra digits."¹⁰ In addition, the TPUC's decision is

⁶ 47 U.S.C. § 153(15).

⁷ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd. 19392, 19428 (1996).

⁸ *Id.* at 19429, ¶ 68 ("To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity.")

⁹ *Id.* The FCC acted further against dialing disparity by mandating that all area code overlays must include 10-digit local dialing by all consumers between and within an area code. *Id.* at 19518, ¶ 286. The FCC found that absent mandatory 10-digit dialing for all local calls in areas served by overlays, a local dialing disparity would occur because existing users from the old code could dial seven digits to call others while new users in the overlay code would need to dial ten digits. Not only would this cause customer confusion, it also would increase burdens on new competitors and new customers. *Id.* at 19518-19519, ¶ 287.

¹⁰ *Id.* at 19427, ¶ 67.

anticompetitive, because it places a burden on CenturyTel's customers to dial an extra digit and pay a toll to make a call to wireless customers with seemingly local telephone numbers. This will not only be confusing to consumers, it will have a chilling effect on consumers' willingness to make land-to-mobile calls because of the added toll. Finally, there are no technical reasons necessitating the imposition of "1+" dialing to local telephone numbers. For these reasons, the *TPUC Order* is contrary to federal law and should be preempted.

II. GEOGRAPHIC LOCATION DOES NOT CONTROL THE RETAIL RATING OF WIRELINE CALLS TO WIRELESS CUSTOMERS

The *TPUC Order* is somewhat confusing in its rationale for why San Marcos customers calling ASAP numbers rated in the Kyle, Fentress, and Lockhart exchanges must dial "1+" and incur toll charges. The TPUC found that "ELCS was clearly meant to provide toll-free calling to exchanges with geographic proximity or with a community of interest",¹¹ and that "the geographic location of the calling customer and the called customer is the appropriate factor for differentiating toll calls from ELCS calls in this case."¹² Then the TPUC completely dismissed the idea that an ASAP paging customer could ever be in the Kyle, Fentress, or Lockhart exchanges, finding rather that "CenturyTel's customers are calling ASAP's paging service at ASAP's mobile telephone switching office located in Austin."¹³ It is clear that CenturyTel must not bill its customers toll charges for land-to-mobile calls to CMRS customers with local telephone

¹¹ *TPUC Order* at 6.

¹² *Id.* at 7.

¹³ *Id.*

numbers. The FCC should grant ASAP's Petition, as least as it relates to CMRS, and declare that the *TPUC Order* is contrary to FCC orders and numbering guidelines for rating calls to CMRS customers.

A. Industry Guidelines and FCC Numbering Orders Recognize That Landline Carriers Should Use NPA-NXXs to Rate Calls

It is well established that carriers determine the rating of calls by comparing the rate centers assigned to the NPA-NXXs of the calling and called parties. For example, the Commission has stated that wireline carriers use the NXX code for billing purposes.¹⁴ NXX codes are assigned to rate centers in an area code, and carriers base charges for calls by comparing the rate centers associated with the calling and called parties.¹⁵ Wireless carriers establish a presence in fewer rate centers than wireline carriers and therefore carefully choose where to seek numbers to enable landline subscribers to call wireless customers within their community of interest without incurring a toll charge. As the FCC has stated, "Carriers generally obtain initial codes to establish a commercial presence, or 'footprint,' in a particular rate center or geographic area."¹⁶ The Central Office Code (NXX) Assignment Guidelines ("CO Code Guidelines") recognize that

¹⁴ Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd. 19,009, ¶ 3 (1998).

¹⁵ *Id.* See also, *Mountain Communications, Inc. v. F.C.C.*, 355 F.3d 644, 645 (D.C. Cir. 2004) ("*Mountain Communications*").

¹⁶ Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 7574, ¶86 (2000).

carriers use NXX codes for billing purposes.¹⁷ Wireless customers often request a telephone number from a particular NPA-NXX that is local to their home or business (from wherever the majority of outbound or inbound calls are most likely) to minimize the incidence of toll and long distance charges on their bills and the bills of parties calling them.¹⁸ Not only are wireless customers concerned about their own wireless bills, they also care about whether their friends, family, and business associates incur additional toll and long distance charges on wireline bills for land-to-mobile calls. The relationship between the rate center designation of telephone numbers and call rating has a direct and tangible impact on customers.

The FCC recently confirmed the importance of the rate center designation of a number in a decision dealing with local number portability (“LNP”). In that case, the FCC clarified that ported numbers must remain rated to their original rate center. In doing so, the FCC acknowledged that a customer’s telephone number has a corresponding original rate center designation that determines how the called is rated.¹⁹

¹⁷ CO Code Guidelines, INC 95-0407-008, February 20, 2004, at § 1.0, page 5. In fact, in a subsequent section, the CO Code Guidelines state that requests to open, modify, or disconnect an NXX code in fewer than the standard 66 calendar days increases the potential for billing errors and should be avoided. CO Code Guidelines at § 6.1.2.1, page 23.

¹⁸ Numbering Resource Optimization, *Notice of Proposed Rulemaking*, 14 FCC Rcd. 10,322, ¶ 112 n.174 (1999). The FCC has established minimal rules for authorizing carriers to obtain initial NXX blocks in a rate center. 47 C.F.R. § 52.15 (g)(2).

¹⁹ Telephone Number Portability, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 23,697, ¶ 28 (2003) (“*Intermodal Porting Order*”). The FCC also noted that there is a dispute as to which carrier is responsible for transport costs when the routing point for the carrier’s switch is located outside the wireline local calling area in which the number is rated – which did not change its analysis regarding rating customers’ calls. *Id.*, ¶ 28 n.75.

Numbers ported from wireline carriers to wireless carriers must continue to be *rated the same* (i.e., based on their original wireline rate centers).²⁰

Issues associated with the rating of calls to ported numbers are the same as issues associated with rating of calls to all wireless numbers,²¹ primarily because of larger wireless calling scopes and mobility. Despite the differences between wireless and wireline calling scopes,²² the FCC has made clear that calls to numbers ported from a landline service to a wireless service will be rated as they were prior to the port when the customer was at a fixed location.

B. ASAP is Correct That The TPUC Appears to Confuse Inter-Carrier and Retail Billing

The FCC's decision in the LNP context buttresses long-standing industry practices regarding the selection and assignment of numbering resources to maximize retail local calling for consumers. Charges to customers for land-to-mobile calls in the CMRS context have always been based on the calling party's calling plan and by comparing the NPA-NXX of the calling and called parties. Similarly, charges for land-to-mobile calls do not hinge on the particular physical location of the called wireless customer (or the wireless switch) at the time of the call, but on the rate center designations of both parties. In the retail billing context, actual physical or geographic locations of the calling and called parties at the time of the call is not relevant. This is

²⁰ *Id.*, ¶¶ 28, 39. The Commission also acknowledged, however, that the *routing will change* when a number is ported – but declined to provide any further inter-carrier compensation analysis.

²¹ *Id.*, ¶ 39.

²² The FCC stated that the advantages of wireless service are mobility and larger calling areas. *Id.*, ¶ 27.

necessary because, in a mobile call setting, the mobile customer may be moving across rate centers during the call, and physical location is therefore not geographically fixed. The NPA-NXX of the calling and called parties, however, is always fixed.

There are two aspects to billing for calls to and from wireless customers: per minute charges that may apply depending upon the calling plan and toll or long distance charges based on the NPA-NXX of the calling and called party at call set-up.²³ Retail call rating based on the fixed NPA-NXX of the parties responds to the need for a uniform, predictable method of charging customers. For purposes of retail billing, the customer's NPA-NXX is determinative of how they are charged, regardless of their physical location at the time of the call. Indeed, as discussed below, LECs and CMRS providers are unable to determine and bill inter-carrier compensation based on the actual location of landline and wireless customers. If this were not the case for retail billing, for example, it would always be a toll call for landline customers to call mobile customers who are roaming, although the landline caller would have no way of knowing this when placing the call.²⁴ While this retail billing methodology is inexact, it allows uniform and reliable billing based on the parties' NPA-NXX and dispenses with the unnecessary and largely impossible complication of determining a person's physical location at the initiation of, and during, each call.

²³ Some retail calling plans provide for unlimited long distance calling at no additional fees unless the bucket of minutes are exceeded in a billing cycle.

²⁴ A call from a customer in a local calling area to a pager (or other CMRS service) with the same local calling area will seem to the calling party to be a local call. *Mountain Communications* at 645.

ASAP correctly asserts that the TPUC appears to have conflated inter-carrier compensation and retail end user billing.²⁵ Calls are rated differently for inter-carrier compensation and retail end users. It is even true, as the Commission stated in the *TSR Wireless* case, that calls may be local for purposes of inter-carrier compensation while at the same time being toll to end users.²⁶

As detailed above, for retail billing, carriers typically compare the NPA-NXX of the calling and called parties to determine the billing to their end users. For inter-carrier compensation, however, the Commission has established that calls between LECs and CMRS providers that originate and terminate within the same Major Trading Area (“MTA”) based on the parties’ physical locations at the beginning of the call are subject to reciprocal compensation rates rather than interstate access charges.²⁷ In the process of determining that the MTA should define the scope of local calling for inter-carrier compensation, the FCC specifically recognized that there would be cases where the parties could not identify with precision the points of origination and termination of the calling and called parties, particularly given the mobile nature of CMRS traffic. The

²⁵ Petition at 23.

²⁶ *TSR Wireless, LLC, et al., v. US West Communications, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 11166, 11184 (2000) (“*TSR Wireless*”), *aff’d*, *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). The FCC in the *TSR Wireless* case made clear that inter-carrier compensation and retail billing are entirely distinct. For instance, the Commission found that 47 C.F.R. § “51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. It does not address the charges that carriers may impose upon their end users.” *TSR Wireless*, 15 FCC Rcd at 11184, ¶ 31.

²⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, ¶ 1043 (1996) (“*Local Competition Order*”).

FCC permitted carriers to calculate overall compensation amounts by extrapolating from traffic studies and samples.²⁸ LECs and CMRS providers have for many years used traffic factors to serve this purpose. Thus, even for inter-carrier compensation, billing is not based on the geographic location of the callers for any given call. The Commission should therefore reject the *TPUC Order's* decision to use geographic location to determine whether toll applies, both because it is not the proper criteria to determine end user charges, and it is impossible to determine in real time for calls to mobile customers.

III. THE COMMISSION SHOULD CONFIRM THAT DIRECT CONNECTION IS NOT REQUIRED, AND THAT RATING AND ROUTING POINTS CAN BE SEPARATE

Throughout its Petition, ASAP argues that its request is entirely focused on whether CenturyTel's customers can call ASAP's customers on a local retail basis, and not about inter-carrier compensation.²⁹ In fact, however, the TPUC's decision to designate ASAP's switch site as a proxy for ASAP's customers' geographic location does impact interconnection and therefore inter-carrier compensation. The TPUC's decision would require wireless carriers to establish facilities in every rate center to obtain local calling. It also affects inter-carrier compensation because, to the extent that customers must dial "1+" instead of dialing a local call, access charges and not reciprocal compensation are likely to apply.

²⁸ *Id.*, ¶ 1044.

²⁹ *See, e.g.*, Petition at 2 n.1 ("ASAP is not addressing the *wholesale carrier compensation* that applies to any calls. This case pertains to **retail rating** to wireline users that call wireless users, and does not have anything to do with *wholesale carrier compensation* between the LEC and the CMRS carrier.")

A. ASAP Should Not Have to Establish Facilities in Every Rate Center to Provide Local Land-to-Mobile Calling to Its Customers

The *TPUC Order* relies on the geographic location of ASAP's switch, which is in Austin, to deny ASAP's complaint against CenturyTel. As ASAP asserts in the Petition,³⁰ apparently the only way that ASAP can achieve local dialing from the San Marcos rate center to its numbers rated in Kyle, Fentress, and Lockhart is to place a switch in one of those rate centers. Believing this to be the case, ASAP states that it located a new switch in Kyle, but even then CenturyTel refused to rate calls from San Marcos to Kyle as local without an interconnection agreement.³¹

The implication of the TPUC's decision is that in order to obtain numbers in rate centers for local calling, a wireless carrier must establish a physical presence in the rate center, either by way of a direct connection or switch. Either requirement would be inconsistent with Federal law. Section 251(a) of the Act permits all telecommunications carriers to comply with their interconnection obligations either directly or indirectly.³² Pursuant to Section 251(c)(2) of the Act, ILECs have the duty to interconnect with a requesting carrier at "any technically feasible point" within its network. This duty includes the provisioning of "routing" and "transmission" functions for exchange and

³⁰ Petition at 40.

³¹ *Id.* at 40, n.81. ASAP believes that CenturyTel will require ASAP to obtain a San Marcos NXX, an interconnection agreement, a direct connection and/or switch in San Marcos, and a demonstration that the called party is present in the local area in order to provide ASAP local calling. *Id.* at 41 n.82.

³² 47 U.S.C. § 251(a).

exchange access services.³³ The FCC's rules define interconnection at the ILEC's tandem as technically feasible³⁴ and specifically confirm that LECs must provide the type of interconnection that a CMRS provider reasonably requests.³⁵ This includes Type 2A (tandem) interconnection versus Type 2B or Type 1 (end-office) interconnection,³⁶ and CMRS providers often interconnect indirectly through large LECs like SWBT.³⁷

Existing law provides that ASAP and other CMRS providers do not have to obtain direct connection to LECs to obtain local calling for their CMRS customers. To penetrate rural markets, wireless carriers must be able to assign NXX codes in all rate centers, even where it only has an indirect interconnection arrangement with the independent or rural LEC that serves that area through an ILEC tandem. Forced direct interconnection would have the effect of requiring wireless carriers to construct costly, duplicative, and inefficient direct trunking arrangements in order to serve these rural markets. Interoffice traffic exchange volumes with rural and independent LECs are often minimal, meaning there is unlikely to be a reasonable economic alternative to indirect interconnection arrangements through an ILEC tandem. As demonstrated below, LNP makes this even more imperative, because a wireless carrier serving a large geographic

³³ 47 U.S.C. § 251(c)(2)(A). CMRS carriers provide exchange and exchange access services. *See Local Competition Order*, ¶¶ 1012-13 (1996).

³⁴ 47 C.F.R. § 51.305(a)(2)(iii).

³⁵ 47 C.F.R. § 20.11(a).

³⁶ *See, e.g.,* Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408, 5451-52 (1994) (summarizing obligations of LECs to provide Type 1, Type 2A, and Type 2B interconnection).

³⁷ *See* Developing a Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610, 9643 (¶ 91 n.148) (2001).

area may win a wireline end user in a rate center to which the wireless carrier is not directly connected. Wireless carriers are not required to establish direct connections to those rate centers simply to serve those ported customers.

B. The *TPUC Order* is Inconsistent With The FCC’s Decision That Rating and Routing Points Need not be the Same

The Commission has already determined that rating and routing points can be in different locations.³⁸ In the *Intermodal Porting Order*, the FCC declared that the rate center of a ported-in customer must remain the number’s original rate center designation, even though the routing may change.³⁹ The FCC stated that this would be the case even though the wireless carrier does not have a point of interconnection or numbering resources in the same rate center.⁴⁰ The *TPUC Order* is directly contrary to the *Intermodal Porting Order* because it essentially requires the rating of a call to be based on the geographic routing point, which in the ASAP case is the Austin switch.

An LNP example serves to illustrate why the FCC must reject the rationale of the *TPUC Order*. In the instance where a San Marcos landline customer calls another landline customer in Kyle, the call will be local. If the Kyle customer ports his or her number to a wireless carrier, the Kyle customer keeps his or her Kyle rate center but

³⁸ *Intermodal Porting Order*, ¶ 39. Verizon Wireless stated in response to Sprint Corporation’s Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, DA 02-1740, that this position is consistent with numbering guidelines, which permit rating points that are different from routing points. *See Central Office Code (NXX) Assignment Guidelines*, 95-0407-008, Section 6.2.2 (Feb. 20, 2004) (“CO Code Guidelines”). (“Each switching center, each rate center and each POI may have unique V & H coordinates”).

³⁹ *Id.*, ¶ 39. The FCC reserved judgment until disposition of a pending interconnection proceeding regarding arguments raised by wireline carriers on the transport costs associated with calls to ported numbers. *Id.*, ¶ 28, n.75.

⁴⁰ *Id.*, ¶ 28.

under the *TPUC Order*, loses local dialing from San Marcos simply due to the fact that he or she chose to port to a wireless customer. This is precisely the kind of discrimination that the Commission has already prohibited.

Finally, an underlying issue that neither the Petition nor the *TPUC Order* address is the inter-carrier payments that will flow from the *TPUC Order*. Under the FCC's rules, as detailed above, calls that originate and terminate within the same MTA are local for inter-carrier compensation purposes. However, because CenturyTel forces its landline subscribers to dial "1+" in order to reach ASAP customers in the Kyle, Fentress, and Lockhart rate centers, CenturyTel will be able to charge its own customers toll for the call, it will be permitted to charge access charges, and it will not pay reciprocal compensation on calls destined to the same community of interest as other calls from its same subscribers. The Commission should clarify that the *TPUC Order* is thus contrary to its rules.

CONCLUSION

For the foregoing reasons, the Commission should grant ASAP's Petition, to the extent it relates to CMRS, and clarify that: (1) LECs cannot require their landline customers to dial extra digits or incur toll or long distance charges when they call mobile numbers rated in otherwise local rate centers; (2) the rate center assignment of the calling and called parties, and not the geographic location of the mobile customer or the mobile switch, determines the rating of land-to-mobile calls; and (3) CMRS providers are not

required to establish direct connections to establish local calling and may designate different rating and routing points.

Respectfully submitted,

VERIZON WIRELESS

A handwritten signature in black ink, reading "Charon Phillips". The signature is written in a cursive style with a large, looping "C" at the beginning. Below the signature is a solid horizontal line.

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